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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1976

No. 76-53

W. DALTON LA RUE, SR.,

and

JUANITA S. LA RUE,

Petitioners,

vs.

UNITED STATES OF AMERICA, ROGERS C. B. MORTON, Secretary of Interior, E. I. ROWLAND, State Director of Bureau of Land Management, and MARSHALL MATLEY, CLIFFORD MATLEY, JOHN MATLEY and WAYNE MATLEY, d.b.a. M. S. LAND & LIVESTOCK CO., a Co-Partnership,

Respondents.

PETITIONER'S RESPONSE TO REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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ARGUMENT

First it should be pointed out that Respondents Matleys' brief should not be accepted by the Court

for the reason that it does not comply with Supreme Court Rule 39. Rule 39 states that all briefs must be printed, which Respondents' brief is not. Further, briefs are supposed to be 6⅛ by 9¼ inches, which Respondents' brief is not.

In opposition to Respondents Matleys' brief, Petitioners' position, as set out in detail in their opening brief, is that the IBLA decision was arbitrary, capricious, not supported by substantial evidence, in error as to matters of law, and unwarranted by facts.

Generally, the essential facts of this case are not in dispute and this Court will not have to reverse the IBLA on the latter's findings of fact in order to reverse the IBLA in the conclusions reached.

Regarding the issue of fraud, Respondents Matleys refer to the IBLA decision and argue that it is clear from the IBLA decision that ". . . the IBLA thoroughly considered the issue of fraud in light of evidence before it . . ." Yet the Respondents Matleys fail to explain the following excerpts from the IBLA:

> "But where it is established that the line is located so as to give both parties full satisfaction of their respective entitlements, as is the case here, the *impetus for its location is not germane to the question of whether it should be moved.*
>
> Nevertheless, the question of fraud is not of controlling importance in this case . . . Also, a licensee's only reasonable basis for challenging his grazing allotment is to show the allotment to be incapable of satisfying the allottee's authorized grazing demand . . ." (Emphasis added).

In the quote above, the IBLA held in effect that fraud by one licensee upon another is not a reasonable basis for challenging a grazing allotment. Certainly, such a holding is arbitrary and capricious.

Respondents Matleys argue that Petitioners do not cite any cases why, under the facts of this case, the Writ should be granted. Clearly, as is argued in Petitioners' opening brief, the commission of a fraud cannot be tolerated. No other principle of law can take precedence over the body of law which protects a defrauded person.

Respondents Matleys next argue that the facts in this case do not establish a fraud. Petitioners argue this point at length in their opening brief and ask this Court to carefully consider the facts, for the facts clearly establish an intentional wrongdoing by one party upon another.

Next Respondents argue that this case does not fit into any of the categories of cases where a Writ shall be granted. Respondents cite Rule 19 of the Supreme Court Rules as controlling. Respondents apparently failed to read that portion of Rule 19 which states as follows:

> ". . . The following, *while neither controlling nor fully measuring the Court's discretion,* indicate the character of the reasons which will be considered . . ." (Emphasis added).

As Petitioners argued in their Opening Brief, the principles established by the lower Court in this case of allowing a person to gain by a fraudulent act, and

of allowing a fraud to go unanswered are too contrary to established principles of law which forbid a fraudulent act from being rewarded.

However, even avoiding the guidelines set forth in Rule 19, this case is one which should receive review by the Supreme Court.

Finally, it should be pointed out that Respondents Matleys do not answer the other issues raised by Respondents. For example, Respondents Matleys have never answered the issue of the violation of 18 USC 1001 by Marshall Matley. It must only be assumed that Respondents have not answered the charge because they have no answer. Marshall Matley knowingly put incorrect information on the Application for Transfer of Grazing Rights and then swore to the truth of that statement.

Petitioners would like to express their concern over the fact that none of the Respondents have answered the charge of violation of 18 USC 1001 and 18 USC 2. Further, *none of the lower courts have dealt with that issue* but have ignored it. Petitioner W. Dalton La Rue is an enrolled agent of the Internal Revenue Service and is cognizant of the elements of fraud as has been determined by this Court in earlier decisions. As a result, Petitioners hope that this Court does not ignore the issue of fraud that is obvious in this case.

The other Respondents, United States of America, Rogers C. B. Morton, and E. I. Rowland have not yet filed their reply and the time within which to file their brief expired some time ago. Petitioners feel

that if a brief is filed by said Respondents at this late date, that it should not be considered by this Court. The United States is granted 15 days additional time to file responding briefs and there is no excuse or reason why the United States should be permitted to file a brief weeks after it is due when other parties are either required to comply with the time allowed, or get an Order extending time. Petitioners would object to any brief being filed at this date by the United States as a fugitive document.

In conclusion, Petitioners ask that their Petition be granted.

Respectfully submitted,

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September 27, 1976.